

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0038 ST
Sales and Use Tax
For The Tax Periods: 1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

- I. **Sales/Use Tax – Public Transportation Exemption:** Windshield Replacement
Payments to Insurance

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2

Taxpayer protests the assessment of use tax on payments made as deductibles for insurance to replace car windshields.

- II. **Sales/Use Tax – Public Transportation Exemption:** Office Supplies

Authority: 45 IAC 2.2-5-61

Taxpayer protests the assessment of use tax on purchases of office equipment used to administer the business of public transportation

- III. **Sales/Use Tax – Public Transportation Exemption:** Promotional Items

Authority: 45 IAC 2.2-5-61

Taxpayer protests the assessment of use tax on purchases of promotional items used in the business of public transportation.

STATEMENT OF FACTS

Taxpayer is engaged in public transportation of stone, sand, gravel, concrete, and heavy equipment.

I. **Sales/Use Tax – Public Transportation Exemption:** Windshield Replacement
Payments to Insurance

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, “an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

Taxpayer purchased replacement windshields for persons whose windshields were damaged from rocks falling down from its trucks. Taxpayer did not pay sales tax to the vendor. Taxpayer asserts that the payments represent the deductible on its insurance policy. Taxpayer did not develop this argument or provide supporting documentation.

FINDING

Taxpayer’s protest is denied.

II. **Sales/Use Tax – Public Transportation Exemption:** Office Supplies

DISCUSSION

Pursuant to 45 IAC 2.2-5-61(a), the state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

45 IAC 2.2-5-61(d) provides a list of items that the Department deems necessary in the rendering of public transportation, and therefore, are exempt from tax. 45 IAC 2.2-5-61(d) explicitly lists the following as items that the Department has determined to be necessary to the rendering of public transportation:

“Equipment and items purchased to meet Federal requirements.”

Taxpayer argues that the safety regulations imposed by the U.S. Department of Transportation require record-keeping and filing of driver qualification files and other items. To the extent that the office supplies purchased by taxpayer are used to meet Federal requirements, the items are not taxable.

FINDING

Taxpayer’s protest is sustained.

III. **Sales/Use Tax – Public Transportation Exemption:** Promotional Items

DISCUSSION

Pursuant to 45 IAC 2.2-5-61(a), the state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

45 IAC 2.2-5-61(e) provides a partial list of items which are not directly used or consumed in the rendering of public transportation, and therefore, are subject to tax. Included in this list explicitly are the items protested by the taxpayer. 45 IAC 2.2-5-61(e) explicitly lists the following as taxable items:

“Promotional expenses, matches, jackets, and promotional items given away to existing or potential customers, advertising to the public, except the printing of schedules and routes.”

Therefore, taxpayer’s purchases of promotional items as identified in the audit are taxable.

FINDING

Taxpayer’s protest is denied.